

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

FILED  
MAR 31 2008

*[Signature]*  
CLERK

\*\*\*\*\*  
PHILLIP WOODWARD,

Plaintiff,  
vs.

\* CIV. 07-4046  
\* ORDER REJECTING REPORT  
\* AND RECOMMENDATION TO DISMISS  
\* UPON SCREENING  
\*

DOUGLAS WEBER, individually as Warden  
S.D. State Penitentiary, Sioux Falls, SD; \*  
DARYL SLYKHUIS, individually as \*  
Associate Warden; GARY TAYLOR, \*  
individually as Unit Manager A-Floor; \*  
MISTY WAAGMEISTER, individually as \*  
Unit Manager A-Floor; AL MADSEN, \*  
individually as Unit Manager A-Floor; \*  
LT. MILLER, individually as Special Security \*  
Investigator; THOMAS LINNEWEBBER, \*  
Major, individually as Special Security \*  
Investigator,

Defendants.  
\*\*\*\*\*

Pending before the Court in the above-entitled action is the Magistrate's Report and Recommendation to Dismiss Upon Screening. Doc. 8. Plaintiff's first two complaints arose from incidents that occurred after an inmate attack against him while he was at Mike Durfee State Prison. Although Plaintiff was transferred to the South Dakota State Penitentiary and attempted to amend his Complaint to add additional defendants from the South Dakota State Penitentiary and allegations regarding incidents that occurred after the transfer, those motions were denied in CIV. 04-4167 in an Order dated January 30, 2007. The Order stated, "Plaintiff is not without a remedy against the potential SDSP Defendants. If he wishes to pursue his claims against them, he may choose to start a separate § 1983 lawsuit." Plaintiff's action in CIV. 04-4167 was dismissed on summary judgment.

In civil rights actions, pleadings are to be liberally construed. *Davis v. Hall*, 992 F.2d 151, 152 (8th Cir.1993). After independently examining the pleadings in this case and considering the

standard set forth in *Bell Atlantic Corp. v. Twombly*, 127 S.Ct. 1955, 1964 (2007), the Court cannot find that the allegations are so conclusory as to warrant summary dismissal. Assuming all the factual allegations to be true, the allegations raise a right to relief which is above the speculative level. Accordingly,

**IT IS ORDERED:**

1. That the Magistrate's Report and Recommendation to Dismiss Upon Screening (Doc. 8) is rejected;
2. That the United States Marshal serve a copy of the complaint, and summons, and this order upon defendants as directed by plaintiff. All costs of service shall be advanced by the United States;
3. That Plaintiff's request for injunctive relief is denied at this time without prejudice to reassert this request; and
4. That Plaintiff's Motion for Copies (Doc. 7) is granted to the extent that the Clerk's office shall provide Plaintiff with the specific documents requested from his previous court file.

Dated this 31<sup>st</sup> day of March, 2007.

BY THE COURT:

Lawrence L. Piersol  
Lawrence L. Piersol  
United States District Judge

ATTEST:

JOSEPH HAAS, CLERK

By: Sally Margulies  
Deputy